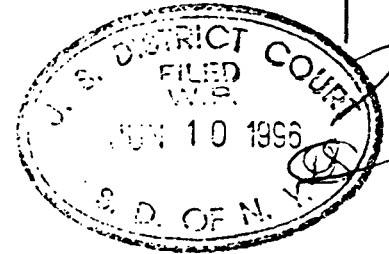


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

-v-

INTERNATIONAL PAPER COMPANY,  
I.S.A. IN NEW JERSEY, INC., NEPERA, INC.,  
REVERE SMELTING AND REFINING CORPORATION  
OF NEW JERSEY, and ROUND LAKE SANITATION  
CORPORATION,

Defendants.

PARTIAL  
CONSENT DECREE

94 Civ. 4681 (BDP)

PARTIAL CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, on June 24, 1994.

B. The United States in its complaint seeks to recover costs that have been or will be incurred by EPA and the Department of Justice for response actions in connection with the release or threatened release of hazardous substances at the Warwick Landfill Superfund Site, Warwick, New York (the "Warwick Site"), as well as civil penalties and punitive damages for violations of a unilateral administrative order issued to I.S.A.

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in New Jersey, Inc. ("I.S.A.") and Round Lake Sanitation Corporation ("Round Lake").

C. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Warwick Site, EPA performed a remedial investigation/feasibility study ("RI/FS") at the Warwick Site which was completed in June of 1991.

D. On June 27, 1991, EPA issued a Record of Decision ("ROD") for the first operable unit at the Site. The remedy selected in the ROD called for, inter alia, construction of a landfill cap, development and implementation of a residential well sampling program, point-of-use treatment for residential wells, fencing, and deed restrictions.

E. On February 28, 1992, EPA issued Administrative Order Index No. II CERCLA-20203 ("Administrative Order") for design and implementation of the remedy called for in the ROD. The Administrative Order was issued pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), because of the existence of an imminent and substantial endangerment to the public health or welfare or to the environment because of an actual or threatened release of hazardous substances from the Warwick Site. Six Respondents were named on the Administrative Order, including defendants I.S.A. and Round Lake. I.S.A. and Round Lake have never complied with the Administrative Order.

F. On October 8, 1991, I.S.A. and Round Lake, among others, were indicted by a grand jury empaneled in the United

States District Court for the Southern District of New York on charges of violations of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, et seq., as well as conspiracy to commit bribery, bribery, money laundering, conspiracy to commit tax evasion, and tax evasion, in an action styled United States v. Robert J. Mongelli, et al., No. 91 Cr. 821 (VLB) (S.D.N.Y.).

G. On September 25, 1992, the United States Attorney for the Southern District of New York entered into a plea agreement with I.S.A. and Round Lake, among others, to resolve their liability under the indictment. Under the terms of the plea agreement, I.S.A. and Round Lake were to be sold and proceeds were to be used to satisfy \$5 million in RICO penalties, as well as other outstanding liabilities to the United States.

H. On October 19, 1994, Browning Ferris Industries of New York, Inc. executed an Assets Purchase Agreement to acquire the assets of, inter alia, Round Lake, which had previously been approved by the U.S. Attorney for the Southern District of New York.

I. On October 19, 1994, Browning Ferris Industries of Paterson, New Jersey, Inc. and Browning Ferris Industries of South Jersey, Inc., executed an Assets Purchase Agreement to acquire the assets of I.S.A., which had previously been approved by the U.S. Attorney for the Southern District of New York.

J. The acquisition of the assets of I.S.A. and Round Lake was consummated on October 19, 1994, and \$1,000,000 (One million

dollars) has been set aside in an escrow account to satisfy, inter alia, the obligations of this Consent Decree.

K. In its Complaint the United States specifically seeks to recover past costs incurred in connection with response actions taken for the Warwick Site, as well as a declaratory judgment for future costs. In addition, the United States seeks civil penalties and punitive damages under Sections 106(b)(1) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b)(1) and 9607(c)(3), for I.S.A.'s and Round Lake's failure or refusal to comply with the Administrative Order.

L. In entering into this Consent Decree, I.S.A. and Round Lake (hereinafter referred to as "Settling Defendants") do not admit any liability arising out of the transactions or occurrences alleged in the Complaint. The purpose of this Consent Decree is to provide for Settling Defendants' reimbursement of a portion of the United States' Past Response Costs, as well as payment of civil penalties and punitive damages for Settling Defendants' failure to comply with the Administrative Order.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the reimbursement of the Superfund, and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying Complaint, the Settling Defendants waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon the Settling Defendants and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendants under this Consent Decree.

## IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever

terms listed below are used in this Consent Decree or in any appendix attached hereto the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

b. "Consent Decree" shall mean this Decree and any attached appendices.

c. "Day" shall mean a calendar day unless expressly stated to be a Working Day. "Working Day" shall mean a day other than a Saturday, Sunday or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Escrow Agent" shall mean the escrow agent designated by the Parties to receive and disburse funds from the acquisition of I.S.A. and Round Lake pursuant to an agreement dated October 18, 1994.

f. "Escrow Agreement" shall mean the agreement entered into between the Parties and the Escrow Agent on October 18, 1994 to escrow \$1,000,000 (one million dollars) from the acquisition of I.S.A. and Round Lake, as well as others, pending further instructions. (Attached as Exhibit A).

g. "Interest," in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507. In calculating the Interest EPA may compound on a daily, monthly or annual basis.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

i. "Parties" shall mean the United States and Settling Defendants.

j. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA and the U.S. Department of Justice on behalf of EPA have incurred for response actions at the Warwick Site prior to and including the date of lodging of this Consent Decree.

k. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

l. "Settling Defendants" shall mean I.S.A. in New Jersey, Inc. and Round Lake Sanitation Corporation.

m. "State" shall mean the State of New York.

n. "United States" shall mean the United States of America, including its agencies, departments, and instrumentalities.

o. "Administrative Order" shall mean Administrative Order Index No. II CERCLA - 20203, issued by EPA with respect to the

Warwick Site on February 28, 1992 to, among others, the Settling Defendants.

p. "Warwick Site" or "Site" shall mean the Warwick Landfill Superfund Site, encompassing approximately 25 acres, located approximately three-fourths of a mile north of State Road 17A, fronting on Penaluna Road in the Town of Warwick, Orange County, New York.

V. REIMBURSEMENT OF RESPONSE COSTS BY SETTLING DEFENDANTS

A. Payment of Response Costs to the United States.

4. Upon entry of this Consent Decree, the Escrow Agent shall pay to the United States \$487,500 with interest accrued pursuant to paragraph 5(b) of the Escrow Agreement for Past Response Costs, within the time period and in accordance with any instructions specified in the Escrow Agreement. Payment shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank at the Office of the United States Attorney for the Southern District of New York, according to instructions provided to the Escrow Agent by that Office, referencing CERCLA number 02P1, the DOJ Number, 90-11-3-812, and the U.S.A.O. file number 94-012-03. Any EFTs received at the U.S.D.O.J. lockbox bank after 4:00 P.M. (Eastern Time) will be credited on the next business day. Notice of the EFT and copies of any correspondence from Settling Defendants to the United States Attorney shall also be sent to the United States and EPA as provided in Section XI (Notices) of this Decree.



B. Payment of Civil Penalties and Punitive Damages

5. After receipt of the Consent Decree, as discussed in paragraph 4, above, the Escrow Agent shall pay to the United States the amount of \$262,500 with interest accrued pursuant to paragraph 5(b) of the Escrow Agreement, in settlement of the United States' claim for civil penalties pursuant to Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for Settling Defendants' failure to comply with the Administrative Order. Payment shall be made within the same time and in the same manner as described in the Escrow Agreement and Section V.A., above.

VI. FAILURE TO MAKE TIMELY PAYMENTS

A. Stipulated Penalty.

6. If any amounts due to the United States from the Settling Defendants under this Consent Decree are not paid by the required date, and such delay in payment is due to the fault of the Settling Defendants, the Settling Defendants shall pay as a stipulated penalty \$1500.00 for each day that such payment is late. Stipulated penalties are due and payable within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties. All payments under this Paragraph shall be paid by certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to EPA Region II, Attn: Superfund Accounting, P.O. Box 360188M, Pittsburgh, PA 15251, and shall reference CERCLA number 02P1 and DOJ Case Number 90-11-3-812.

Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letters, shall be sent to the United States as provided in Section XI (Notices and Submissions). Stipulated penalties under this paragraph shall accrue as provided above regardless of whether EPA has notified the Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. In no event shall the Escrow Agent be liable for stipulated penalties.

7. In the event that the United States brings an action to collect any payment required by this Consent Decree, the Settling Defendants shall reimburse the United States for all costs of such action, including, but not limited to, costs of attorney time.

8. Payments made under Paragraphs 6-8 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments required by this Decree.

9. The obligations of the Settling Defendants to pay amounts owed the United States under this Consent Decree for Past Response Costs are joint and several. In the event of the failure of one of the Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendant shall be responsible for such payment.

#### VII. COVENANT NOT TO SUE BY PLAINTIFF

10. In consideration of the payments that will be made by the Settling Defendants under the terms of the Consent Decree,

and except as specifically provided in Paragraph 13, infra, the United States covenants not to sue the Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Past Response Costs, as defined in this Consent Decree, and also covenants not to sue the Settling Defendants pursuant to Sections 106(b)(1) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b)(1) and 9607(c)(3) for civil penalties and punitive damages for the Settling Defendants' failure or refusal to comply with the Administrative Order. This covenant not to sue shall take effect upon receipt by the United States of all payments required by Section V of this Consent Decree. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

11. Reservations of Rights.

a. General The covenant not to sue set forth in Paragraph 10, supra, does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters. Except as expressly provided in Paragraph 10, supra, nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or any other provision of law, against Settling

Defendants or against any other person or entity not a party to this Decree.

b. Specific Reservations. The covenant not to sue set forth in Paragraph 10, supra, does not apply, inter alia, to the following:

- (1) claims based on a failure by Settling Defendants to meet the requirements of this Consent Decree;
- (2) liabilities for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such destruction, injury or loss;
- (3) liabilities for response costs that have been or may be incurred by any natural resources trustee;
- (4) criminal liability;
- (5) liability for costs incurred or to be incurred by the United States in connection with the Warwick Site that are not within the definition of Past Response Costs set forth in Paragraph 3, supra;
- (6) liability arising from the past, present or future disposal, release, or threat of release of hazardous substances outside of the Warwick Site; and
- (7) liability for future disposal and future releases or threats of releases of hazardous substances at the Warwick Site.

#### VIII. COVENANTS BY SETTLING DEFENDANTS

12. a. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the

United States with respect to the Warwick Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA §§ 106(b)(2), 107, 111, 112, or 113, or any other provision of law, any claim against the United States, including any department, agency, or instrumentality of the United States pursuant to CERCLA Sections 107 and 113 related to the civil penalties and punitive damages paid under this Consent Decree or related to the Past Response Costs, or any claims arising out of response activities at the Warwick Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

**IX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

13. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Warwick Site against any person not a party hereto.

14. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled to

such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

15. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, excluding the matter entitled Warwick Administrative Group, et al. v. Avon Products, Inc., et al., 92 Civ. 9469 (S.D.N.Y.) (BDP), they will notify the United States in writing within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial for matters related to this Consent Decree.

16. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Warwick Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case;

provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Section VII (Covenant Not to Sue by Plaintiff).

17. Each Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Warwick Site since notification of potential liability by EPA regarding the Warwick Site, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA.

#### X. NOTICES AND SUBMISSIONS

18. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

##### As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Attn: 90-11-3-812

William Hoffman  
Assistant United States Attorney  
Southern District of New York  
100 Church Street  
19th Floor  
New York, NY 10007

As to EPA:

Warwick Site Landfill Attorney  
New York/Caribbean Superfund Branch  
Office of Regional Counsel  
290 Broadway  
New York, New York 10007-1866

As to Settling Defendants:

Kevin J. Brown, Esq.  
Mannion, Copani, Alderman & Brown  
224 Harrison Street, Suite 306  
Syracuse, New York 13202

XI. EFFECTIVE DATE

19. This Consent Decree shall become effective upon the date of its entry by the Court.

XII. RETENTION OF JURISDICTION

20. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree. The Court shall also retain jurisdiction over all matters asserted in the United States' Complaint which are resolved by this Consent Decree until such time as Plaintiff's covenant not to sue becomes effective, as set forth in Paragraph 11, supra.

XIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

21. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose



facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

#### XIII. APPROVAL AND ENTRY BY THE COURT

22. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### XIV. SIGNATORIES/SERVICE

23. Each undersigned representative of a Settling Defendant to this Consent Decree, the EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

24. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. The Settling Defendants waive any objection to service made by mail to the person so identified.

25. This Decree may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SO ORDERED THIS 10<sup>th</sup> DAY OF June, 1995.

Robert D. Paulin  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. International Paper Company, et al., Civil Action No. 94 Civ. 4681 (BDP), relating to the Warwick Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 7/14/95

Lois J. Schiffer  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
Attorney for Plaintiff the  
United States of America

Date: 9/28/95

By:


William J. Hoffman  
WILLIAM J. HOFFMAN  
Assistant United States Attorney  
Southern District of New York  
100 Church Street, 19th Floor  
New York, NY 10007

Date: 9/22/95

Timothy K. Webster  
TIMOTHY K. WEBSTER  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. International Paper Company, et al., Civil Action No. 94 Civ. 4681 (BDP), relating to the Warwick Landfill Superfund Site.

Date: 8/20/95

  
\_\_\_\_\_  
JEANNE M. FOX  
Regional Administrator  
Region II  
U.S. Environmental Protection  
Agency  
290 Broadway  
New York, NY 10007-1866

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. International Paper Company, et al., Civil Action No. 94 Civ. 4681 (BDP), relating to the Warwick Landfill Superfund Site.

FOR DEFENDANT I.S.A.in  
New Jersey, Inc.

Date: July 24, 1995

Jan C. Magella  
Name  
Title  
Address

FOR DEFENDANT Round Lake  
Sanitation Corporation

Date: July 24, 1995

Jan C. Magella  
Name  
Title  
Address

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: Mannion, Copani, Alderman & Brown  
Title:  
Address: 224 Harrison Street, Suite 306  
Syracuse, New York 13202